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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/155770

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 25, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on April 03, 2014, at Waukesha, Wisconsin.

The issue for determination is whether petitioner was overpaid FS.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Bonnie Laub

Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County and is a recipient of FS.
2. On August 13, 2012 the agency issued a notice of decision to petitioner and his authorized representative stating that effective September 1, 2012 he would receive FS in the amount of \$200. The only income budgeted for petitioner at that time was from Social Security. The notice

also stated that petitioner was required to report to the agency any new source of income or has a change in a job. See Exhibit 4.

3. In August or September 2012, petitioner began working at Culvers. This employment was reported on January 31, 2013 when petitioner completed his online renewal. See Exhibit 5.
4. On November 21, 2013 the agency issued a notice of decision to petitioner stating that he was overpaid FS from October 2012 to February 2013 in the amount of \$718 due to client error. See Exhibits 2 and 3.

### **DISCUSSION**

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, **even if the overpayment was caused by agency error.** 7 C.F.R. §273.18(b)(3)(emphasis added). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); See also FS Handbook, §7.3.1.2, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

Here, the agency argues that the petitioner did not report all of his income and therefore he received more FS than he was eligible to receive. Under FS rules, an FS household like the petitioner's must report as follows:

Elderly, Blind, or Disabled (EBD) Food Units are those where all food unit members are elderly, blind, or disabled. If no one in this food unit has earned income, these food units are required to report the following changes within 10 days:

1. Number of people in the home:
  - a. When a person is born or dies
- b. When someone moves in or out
2. Income:
  - a. Unearned: New source- increases of more than \$100 per month in child support income; increases of more than \$50 per month in other types of unearned income.
  - b. Earned: Changes in the source of income (a new job must be reported within 10 days from the start of the job, not from when the recipient received the job.**
3. Address/Shelter Expense:
  - a. New address when a move takes place.
  - b. Change in shelter and utility expense obligations if a move occurs.
4. Any change in the legal obligation to pay child support.

**Changes must be reported to the FS agency within 10 days of the date the change is known to the food unit, except for reporting receipt of a new job. Then the change must be reported within 10 days from when the job starts.**

FS Handbook, §6.1.1.1.

According to the overissuance worksheets, the income for petitioner's household - with the earned income from the job at Culver's that was not reported timely - made petitioner eligible for less FS than he received. Thus, the agency seeks to recoup the overissuance of FS. Petitioner did not argue with the computations, but rather wanted to place the blame for the lack of reporting on his authorized representative. FS policy states that authorized representatives may be authorized to act on behalf of a food unit in the application process, in obtaining FS benefits, and/or in using FS benefits. FS Handbook, §2.1.3.3. Additionally, the authorized representative designated for application processing purposes may also carry out food unit responsibilities during the certification period such as reporting changes in the food unit's

circumstances. Id. The petitioner did complete an Authorization of Representative form along with the authorized representative and in doing so authorized the representative to represent him in his application and reviews for FS. However, the FS rules do not care who failed to report the new job. Federal law requires *all* FS overpayments be recovered, regardless of whether the recipient or the agency is at fault, and that all adult household members are liable. 7 CFR § 273.18. In other words, even if the new job had been reported timely by either petitioner or the authorized representative, if the agency failed to budget that income, the overpayment is still recoverable.

Based on the foregoing, I must find that the petitioner was overpaid FS. He is reminded that if he has an open FS case, that he may make arrangements for having his overpayment taken out of his current FS allotment per month, or make other arrangements for the repayment of the debt as described in the notice of overpayment.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

Finally, I add for petitioner's information that the FS program is a federal aid program, administered by the U.S. Department of Agriculture, under the Food and Nutrition Service (FNS) Administration, though benefits are distributed by each U.S. state's Division of Social Services or Children and Family Services. FS is the largest nutrition assistance program and is estimated to have served more than 40 million low income Americans per year in recent years. As an entitlement program, FS benefits cost \$76.4 billion in Fiscal Year 2013 and supplied roughly 47.6 million Americans with an average of \$133.08 per month in food assistance. It is the largest nutrition program and is a critical component of the federal social safety net for low-income Americans. The high cost of the FS program makes the Nutrition title the most expensive, and contentiously debated, title of the United States Farm Bill. The funding for this program is paid for by American tax dollars, which are then paid out by the federal and state governments. This is not "free money".

### **CONCLUSIONS OF LAW**

Petitioner was overpaid FS from October 2012 to February 2013 in the amount of \$718.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 16th day of April, 2014

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 16, 2014.

Waukesha County Health and Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability